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UNCLAS SECTION 01 OF 03 SANTO DOMINGO 005858

SIPDIS

STATE FOR WHA/CAR (MCISAAC) AND L/LEI (TAYLOR AND FUENTES);
JUSTICE FOR MAZUREK, ORJALES, SOKHOL;
US MARSHALS PLEASE PASS TO C. DUDLEY

E.O. 12958: N/A

TAGS: CJAN KJUS PGOV DR

SUBJECT: NEW DOMINICAN CODE AMENDS EXTRADITION PROCESS

¶1. Summary. The Dominican Republic implemented a new criminal procedural code on September 27, 2004 which moves the Dominican criminal justice system from an inquisitorial system towards an accusatory system. The new code amends the procedure for handling extradition cases. The USG has requested the extradition of three fugitives since the enactment of the new statute. Since none of those fugitives has been located, the new code's provisions have not yet been tested. Possible procedural scenarios under the new code are presented below. Emboffs will continue to meet with Dominican counterparts to discuss the new procedures and attempt to determine how they will be applied. End Summary.

Background

¶2. (U) The United States and the Dominican Republic entered into a bilateral extradition treaty in 1910. No extraditions took place under the treaty until the Dominican Republic passed implementing legislation in 1997. Extraditions to the United States began in 1998 and since that time there have been more than 80 fugitives returned to various U.S. jurisdictions to stand trial or serve sentences.

¶3. (U) On September 27, 2004, a new Dominican criminal procedural code went into effect. The code moves the Dominican Republic away from a French based inquisitorial system toward an accusatorial or adversarial system similar to that used in the United States. The new criminal procedural code changes how extradition cases will be treated in the Dominican Republic.

Old System

¶4. (U) The extradition system in place from 1997 through September 2004 placed the burden on the executive branch of the GDR to handle most extradition related requests. The process in a successful extradition case was as follows:

¶A. The USG delivered a formal diplomatic note with the authenticated extradition package to the Foreign Ministry and sent a courtesy copy to the Attorney General's office.

¶B. The Foreign Ministry delivered the information to the Attorney General's office and authorized the Attorney General to proceed.

¶C. The Attorney General's office evaluated the request and, if it was determined to be a valid request, issued a provisional arrest warrant for the fugitive who was the subject of the request.

¶D. The Attorney General's office delivered the provisional arrest warrant to the National Directorate for Drug Control (DNCD).

¶E. The DNCD, with guidance and assistance from the U.S. Marshals, located the fugitive in the Dominican Republic.

¶F. The fugitive was placed in a cell in Najayo prison. (The USG helped finance these cells to hold fugitives subject to extradition requests.)

¶G. The fugitive was interrogated for the first time by an assistant attorney general.

¶H. The fugitive was interrogated for the second time by an assistant attorney general.

¶I. The Attorney General's office issued a recommendation to extradite the fugitive.

¶J. The Attorney General's office forwarded its recommendation to the Foreign Ministry (note: this step was sometimes skipped; if skipped, the recommendation was forwarded directly to the Legal Advisor to the President.)

¶K. The Foreign Ministry forwarded the Attorney General's

recommendation to the Legal Advisor to the President.

1L. The Legal Advisor to the President reviewed the case and the Attorney General's recommendation.

1M. The Legal Advisor to the President prepared an extradition order for signature by the President.

1N. The President signed the extradition order.

1O. The order was delivered to the DNCD.

1P. The DNCD delivered the fugitive to the U.S. Marshals at Las Americas airport and the fugitive was returned to the appropriate U.S. jurisdiction.

New system

15. (U) The new system has yet to be tested and there are a number of variables that may be interpreted in various manners. Here are possible interpretations of the new system:

1A. Steps A thorough I as under the old system (see above).

1B. The Attorney General's office forwards its recommendation to the Criminal Chamber of the Supreme Court of Justice and requests a hearing date.

1C. The Criminal Chamber of the Supreme Court sets a hearing date.

1D. The Attorney General's office, the fugitive plus fugitive's counsel and a "representative" of the petitioning country appear and argue the case.

(NOTE: The USG, as the representative of the petitioning country, could have a few possible roles. We could:

VARIATION # 1

a. hire a Dominican Attorney to argue the merits of every case,

VARIATION # 2

b. send an accredited diplomat to each hearing to certify that the documents submitted to the government to request the extradition of a fugitive speak for themselves and present no further argument, or

VARIATION # 3

c. choose not to send a representative to the hearing and rely on the Attorney General's office to represent the interests of the USG. END NOTE.)

1E. The Criminal Chamber of the Supreme Court will decide whether to authorize extradition of the fugitive.

1F. If the Criminal Chamber of the Supreme Court decides to extradite, it would presumably issue a final judicial order and the fugitive would be escorted to the airport by drug enforcement officials (DNCD) and turned over to the U.S. Marshals for return to the United States.

1G. If the Criminal Chamber of the Supreme Court decides not to extradite, presumably the fugitive would be released.

16. (SBU) In preliminary meetings the Dominican assistant attorney general in charge of extraditions told poloff that the USG will be required to "hire a Dominican attorney on a contract basis to argue all the details of the case" (Variation # 1 above). Poloff replied that the burden should remain on the Attorney General's office to represent the interests of the USG as contemplated in the treaty language. Poloff also raised the issue of reciprocity and noted that the Dominican government was not required to hire an attorney to represent its interests in extradition proceedings in the United States; the role of advocate for the Dominican government in the U.S. is filled by the Department of Justice through its assistant U.S. attorneys. The assistant attorney general acknowledged the argument but told poloff, "We will have to wait to see how the Supreme Court interprets the new code."

Hypotheses under the new system

17. (SBU) Embassy Santo Domingo makes the following preliminary hypotheses about the extradition process under the new criminal procedural code:

- The extradition treaty contemplates a judicial order for extradition. The new code is in line with the treaty

conditions. It is unlikely that an executive order will be sufficient to extradite a fugitive whose extradition was requested after the implementation of the new criminal procedural code (9/27/04).

- Those fugitives who choose not to challenge their respective requests for extradition may waive their hearings in front of the Criminal Chamber of the Supreme Court and voluntarily return to the United States. The Criminal Chamber of the Supreme Court would still need to sign the extradition order.

- Assuming the fugitive is located, the extradition process should move more quickly from the time a provisional arrest warrant is issued until the time of extradition from the Dominican Republic. Built-in time limits in the criminal procedural code should expedite the process.

- The new process will decrease the number of fugitives who are returned to the United States over the next year. After that, the legal tests and processes should be concluded and the system will be more efficient.

- The possibility exists that the Attorney General's office will place the majority of the burden for proving the case on the USG representative rather than vigorously arguing for extradition of any given fugitive.

18. (U) Poloff has faxed the applicable portion of the new criminal procedural code to the Department of Justice/Office of International Affairs; Department of State WHA/CAR and L/LEI. Emboffs will continue to meet with appropriate counterparts to discuss how they believe the new criminal procedural code provisions will affect the extradition process.

19. (U) Drafted by Angela Kerwin.

110. (U) This piece and others can be found at our SIPRNET site
<http://www.state.sgov.gov/p/wha/santodomingo/> along with extensive other material.
HERTELL